

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
Delaware North Companies, Inc. - Boston )
Application for Authority To Operate a 900 MHz ) FCC File No. 0002991836
Business and Industrial Land Transportation )
Station in Boston, Massachusetts )
and )
Request for Waiver of 900 MHz Application )
Filing Freeze )

ORDER

Adopted: October 10, 2008

Released: October 10, 2008

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. We address a request for waiver filed by Delaware North Companies, Inc. – Boston (Delaware North). Delaware North seeks a waiver of the 900 MHz application freeze prohibiting the filing of applications for new licenses. Delaware North requests a waiver to permit the processing of its application for frequencies formerly authorized to it under 900 MHz Trunked, Business Station WPIH930 in Boston, Massachusetts. For the reasons stated below, we grant the request for waiver and permit the processing of Delaware North’s application.

2. Background. On September 7, 2000, the Commission authorized Delaware North to operate the facilities authorized under Call Sign WPIH930. Delaware North operates the station to coordinate personnel and various activities at TD Banknorth Garden (Garden), an entertainment/sports arena in downtown Boston that is home to the Boston Bruins hockey team and Boston Celtics basketball team; it is the site of roughly 200 public events each year, including concerts and political conventions. A commuter rail station owned by the Massachusetts Bay Transportation Authority (MBTA) occupies the ground floor of the Garden. Delaware North is contractually obligated to the MBTA to provide security for the train station at all times, whether or not an event is occurring at the Garden.

3. On September 17, 2004, the Wireless Telecommunications Bureau (Bureau) instituted a freeze on applications for new 900 MHz Business and Industrial Land Transportation (B/ILT)

1 See FCC File No. 0002991836, Application for Wireless Telecommunications Bureau Radio Service Authorization (filed Apr. 12, 2007) (Waiver Request).

2 See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, Public Notice, 19 FCC Rcd 18277 (WTB 2004) (900 MHz Freeze Notice); see also Amendment of Part 90 of the Commission’s Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, WT Docket No. 05-62, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 20 FCC Rcd 3814 (2005) (900 MHz NPRM).

3 Waiver Request at 1.

4 Id.

5 Id. at 1-2.

authorizations because it feared that the exceptionally large number of applications it had received could compromise its ability to accommodate displaced systems during the 800 MHz band reconfiguration process designed to resolve interference to public safety communications.<sup>6</sup> The Bureau stated that it would continue to accept applications for license modification and would entertain requests for waiver of the 900 MHz application freeze.<sup>7</sup> The Commission subsequently released a *Notice of Proposed Rulemaking* seeking comment on the possibility of geographic licensing in the 900 MHz B/ILT band, which reaffirmed the freeze and reiterated that it would consider requests for waiver of the freeze.<sup>8</sup>

4. On June 13, 2005, the Commission sent Delaware North a license renewal reminder letter.<sup>9</sup> Delaware North, due to what it characterizes as an administrative oversight, failed to file a license renewal application.<sup>10</sup> On September 7, 2005, the authorization for Call Sign WPIH930 expired by its own terms. On April 12, 2007, Delaware North filed the subject application, which seeks a new permanent authorization to cover its operation of the existing facilities.<sup>11</sup> Delaware North also requests a waiver of the freeze on new 900 MHz license applications to permit the processing of its application.<sup>12</sup>

5. *Discussion.* To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;<sup>13</sup> or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>14</sup> We conclude that Delaware North has demonstrated that grant of its waiver request would not frustrate the underlying purpose of the freeze.

6. The purpose of the freeze on applications for new 900 MHz B/ILT licenses is to preserve adequate spectrum resources during the 800 MHz band reconfiguration as well as to preserve the spectrum landscape until the Commission resolves the geographic licensing issues raised in the *900 MHz NPRM*.<sup>15</sup> With regard to the freeze, Delaware North seeks a waiver pursuant to the *900 MHz Freeze Notice* and the *900 MHz NPRM*.<sup>16</sup> Delaware North contends that the purpose of the freeze would not be frustrated by grant of its request,<sup>17</sup> that such a grant would serve the public interest,<sup>18</sup> and that, given that

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<sup>6</sup> See *900 MHz Freeze Notice*, 19 FCC Rcd at 18277-78.

<sup>7</sup> *Id.* at 18278 n.7.

<sup>8</sup> See *900 MHz NPRM*, 20 FCC Rcd at 3836 ¶ 67.

<sup>9</sup> See FCC Renewal Reminder Letter, Reference No. 3557078 (Jun. 13, 2005).

<sup>10</sup> See Waiver Request at 1.

<sup>11</sup> File No. 0002991836 (filed Apr. 12, 2007). In a separate application dated March 30, 2007, Delaware North requested Special Temporary Authority (STA) to operate the subject 900 MHz Service facilities; this application was granted April 5, 2007, with the assignment of call sign WQGS589. FCC File No. 0002974243. The STA was renewed on June 1, 2007 (FCC File No. 0003045522, filed May 29, 2007); on November 5, 2007 (FCC File No. 0003219374, filed Nov. 2, 2007); on May 2, 2008 (FCC File No. 0003411079, filed Apr. 25, 2008); and on August 20, 2008 (FCC File No. 0003551757, filed Aug. 19, 2008). The STA to operate Call Sign WQGS589 expires February 16, 2009.

<sup>12</sup> Waiver Request at 1-3.

<sup>13</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>14</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>15</sup> See *900 MHz Freeze Notice*, 19 FCC Rcd 18277; *900 MHz NPRM*, 20 FCC Rcd at 3836 ¶ 67.

<sup>16</sup> Waiver Request at 2.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 3.

the Commission has favorably entertained waiver requests filed by similarly situated entities, Delaware North's request merits similar consideration.<sup>19</sup>

7. Delaware North notes that the underlying purpose of the freeze is to preserve 900 MHz spectrum during the 800 MHz band reconfiguration process and until the Commission resolves geographic licensing issues raised in the *900 MHz NPRM*; it adds that the freeze is intended to ensure that unencumbered spectrum remain available, not to clear occupied spectrum.<sup>20</sup> Delaware North notes that its license to operate on the subject frequencies was granted prior to the freeze, and expired after the freeze became effective.<sup>21</sup> As such, grant of the waiver request, according to Delaware North, would not reduce the amount of spectrum that was available prior to the freeze.<sup>22</sup>

8. Delaware North believes grant of the waiver is in the public interest, stating the license is necessary for security, concessions, and arena personnel to communicate effectively to manage and operate the Garden during sporting, concert, and other events.<sup>23</sup> Further, as the party responsible for the safety and security of all persons using the MBTA commuter rail station on the ground floor of the Garden, Delaware North states that the communications system is vital.<sup>24</sup> Delaware North notes that no other applicant would be prejudiced by grant of the subject waiver request and the associated application, and that it (Delaware North) seeks simply to secure the use of the spectrum for which it was previously authorized.<sup>25</sup>

9. As noted, Delaware North was licensed for Station WPIH930 until that license expired in September 2005. Thus, Delaware North was authorized to operate Station WPIH930 prior to the Commission's decision to institute a freeze on new applications for 900 MHz B/ILT spectrum. Delaware North does not seek to modify any of its formerly licensed channels. Because grant of the underlying application will restore the channels and the exact operating parameters of the previous authorization, we believe that grant of this waiver and our processing of the related application will not interfere with the spectrum needs associated with the 800 MHz proceeding, or affect the 900 MHz B/ILT spectrum landscape during the pendency of the 900 MHz rulemaking. Further, given that Delaware North was an established 900 MHz licensee before the 800 MHz reconfiguration decision, it would not have been affected by the application freeze had it filed a timely renewal application. Thus, grant of the waiver will not interfere with the underlying purpose of the 900 MHz freeze.

10. Grant of the waiver request serves the public interest. The waiver permits the processing of an application that preserves a radio communications system that is used continually by Delaware North to carry out safety and security functions at the Garden and the MBTA commuter rail station. Delaware North has satisfactorily shown that the underlying purposes of the 900 MHz freeze (*i.e.*, to preserve unencumbered 900 MHz spectrum for possible future geographic licensing, as well as to support 800 MHz rebanding) would not be frustrated by a waiver in this instance, in that, but for Delaware North's administrative oversight, the spectrum would in fact have been encumbered. We also find grant

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<sup>19</sup> *Id.* at 2-3 (citing Disneyland Resort, *Order*, 21 FCC Rcd 536 (WTB PSCID 2006); Georgia Pacific Corporation, *Order*, 21 FCC Rcd 15077 (WTB PSCID 2006); Cam Jo, Inc. dba Clearwater Yellow Cab Pascot & Tarpon Springs, *Order*, 22 FCC Rcd 3843 (WTB MD 2007); Domtar Industries, Inc., *Order*, 22 FCC Rcd 574 (WTB MD 2007)).

<sup>20</sup> Waiver Request at 2.

<sup>21</sup> *Id.* The freeze on applications for new 900 MHz B/ILT licenses became effective Sep. 17, 2004. *See 900 MHz Freeze Notice*, 19 FCC Rcd at 18277.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

to be in the public interest, given the important security role that Delaware North plays at the Garden and MBTA rail station.

11. For the aforementioned reasons, we grant Delaware North's request for waiver of the 900 MHz freeze and permit the processing of its application. To the extent Delaware North may have operated on the subject frequencies without Commission authorization during the period after the expiration of the license for Station WPIH930 and before the Commission granted Delaware North an STA, our decision is without prejudice to any Enforcement Bureau action.<sup>26</sup>

12. Accordingly, IT IS ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by Delaware North Companies, Inc. – Boston, on April 12, 2007, with FCC File No. 0002991836 IS GRANTED.

13. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), that application FCC File No. 0002991836, filed by Delaware North Companies, Inc. – Boston, on April 12, 2007, SHALL BE PROCESSED in accordance with this *Order*.

14. This action is taken under delegated authority pursuant to Sections 0.131(a) and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131(a), 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau

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<sup>26</sup> See 47 C.F.R. § 1.903 (authorization required). Notwithstanding our decision in this particular case, we caution that a licensee must abide by the Commission's filing deadlines. All licensees are responsible for filing renewal applications and related petitions in a timely manner. Thus, we admonish Delaware North to conform to this requirement in the future and to take any necessary steps to avoid future occurrences, as the Commission does not routinely grant such waiver requests.